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Habitual offender laws often fail

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In 1980, the Alabama Legislature "got tough" on criminal offenders when it passed the Habitual Felony Offender Act which, generally, mandates that individuals with prior felony convictions subsequently convicted of another felony receive significantly enhanced sentences. This can include life in prison without possibility of parole, depending on the seriousness of the offense and the number of prior felony convictions.

Alabama's law is not a "three-strikes and you're out" law such as what California, 24 other states and Congress passed in the early 1990s and which do not involve sentence enhancements until an offender actually acquires a third conviction. Rather, Alabama's habitual offender law is a "one strike" law mandating enhanced sentences for offenders with one prior felony conviction. All of them can be classified as "habitual offender" statutes.

These laws are neither new (New York passed a habitual offender statute in 1797) nor without controversy, from either a legal or a policy standpoint. From a legal standpoint, hundreds of Alabama offenders have challenged the constitutionality of the act. With few exceptions, state and federal appellate courts have repeatedly ruled habitual offender laws are constitutional and held that legislatures have the authority to impose longer sentences on repeat offenders to strengthen the state's crime control efforts.

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While debate continues over the constitutionality of habitual offender statutes, debate also continues over whether they represent reasonable policy; that is, "reasonable" in the sense of the policy achieving its goal at a reasonable cost.

To illustrate, an unreasonable policy would be to mandate a life term of incarceration for any person (juvenile or adult) convicted of a felony. Issues of fairness aside, from a purely economic standpoint such a policy would quickly bankrupt the state, as it had to build and operate dozens of new prisons at a cost of hundreds of millions of dollars. When considering the reasonableness of policy, we must first consider its purpose.

Generally, habitual offender statutes seek to reduce crime through deterrence and/or incapacitation. Deterrence is one of the oldest theories in criminology. It assumes



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humans are rational actors seeking to maximize their pleasure and minimize their pain.

The theory argues that criminals weigh the possible benefits of the behavior (what would be gained) against the possible costs of the behavior (that is, the "pain" associated with the behavior). Because humans tend to seek pleasure and avoid pain, our behavior can thus be controlled by ensuring the pain of a particular course of action outweighs the pleasure associated with it. Deterrence proponents thus argue that to reduce crime, the punishment imposed (its costs) must outweigh its benefits.

Additionally, the punishment must also be certain (the offender actually receives the prescribed punishment) and swift (close enough in time to the act that the offender learns there is a connection between the act and the punishment). If punishment is severe, swift, and certain, prospective offenders will rationally choose not to engage in the illegal behavior. Incapacitation, on the other hand, makes no assumption about human rationality. Rather, its supporters simply argue that locking up an offender removes him from society and prevents him from causing any more harm. Do habitual offender statutes in lower crime rates? My UAB colleagues, Dr. Tomislav Kovandzic and Dr. Lynne Vieraitis, and I sought to answer that question by conducting a series of evaluations of the impact of recidivist statutes on city crime rates.

For our evaluation, we collected FBI crime data for 188 U.S. cities with a population of 100,000 or more for the period 1980-2000. One-hundred ten of the cities were in states with habitual offender statutes and 78 of them were in states without them. We also collected data for these cities on a host of factors associated with crime, such as poverty rates, educational achievement, and the population's age distribution. We collected these data to statistically control for their effects on crime; in other words, by having our statistical models factor out their effects, we could be reasonably confident any differences found in crime rates in the two groups of cities before and after passage of the statutes were not due to these factors.

Using extremely sophisticated statistical analysis, we compared crime rates before and after the passage of the laws for the two groups. Because the laws were supposed to result in deterrence or incapacitation effects and thus reduced crime rates, we hypothesized that cities in states with the laws should have lower crime rates after passage.

Our results showed no significant difference between the two groups of cities in their rates for serious crimes like robbery, burglary, auto theft, or assault after passage of the laws. More important, however, was our finding that homicide rates in cities in states with the statutes were significantly higher than homicide rates in cities located in states without the statutes. In other words, a "backfire" effect occurred where homicide rates increased after passage of the laws. We thus found no evidence that habitual offender statutes like the HFOA or "three strikes" laws had any significant effect on crime rates, and caused homicide rates to increase.

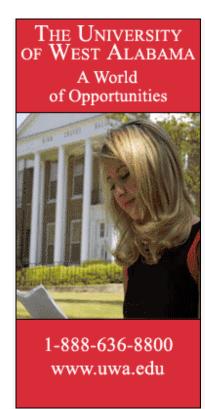
How can enhancing punishment for repeat offenders increase a city's homicide rate? We believe that repeat offenders realize that because their sentence for the substantive offense say a robbery will be dramatically enhanced because they have prior felony convictions, it becomes imperative not to be caught. The best way to insure that is make certain no witnesses or police officers are around to assist in their capture. In short, because they face such dramatic enhancements to their sentences, repeat offenders sometimes turn non-lethal events such as a burglary into lethal ones.

Sound crime control policy? It seems not, particularly when one factors in other considerations such as the costs of building and running the prisons housing these offenders. Although the laws may be constitutional, they do not represent sound policy. Ultimately, their costs far outweigh their benefits. John J. Sloan III, Ph.D. is associate professor of criminal justice and sociology, and chairman of the Department of Justice Sciences at UAB. E-mail: prof@uab.edu. For more information on criminal sentencing policy, including habitual offender statutes, log on to: www.ncjrs.gov.



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